

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO**

THE CINCINNATI INSURANCE  
COMPANY, an Ohio business entity,

Plaintiff,

v.

NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA., a  
Pennsylvania business entity,

Defendant.

Case No.

**NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. § 1441(B)  
(DIVERSITY)**

**[Accompanying Documents: Request  
for Judicial Notice, Declaration of  
Patrick Fredette]**

TO THE CLERK OF THE UNITED STATES DISTRICT COURT, SOUTHERN  
DISTRICT OF OHIO, AND TO PLAINTIFF AND PLAINTIFF'S ATTORNEYS OF  
RECORD:

PLEASE TAKE NOTICE that Defendant, National Union Fire Insurance Company of  
Pittsburgh, Pa. ("National Union"), hereby removes the captioned action from the Court of  
Common Pleas of the State of Ohio, County of Hamilton, Case No. A1701483, to the United  
States District Court, Southern District of Ohio, pursuant to 28 U.S.C. §§ 1332 and 1441, et seq.

**I. RELEVANT FACTUAL BACKGROUND**

1. On or about March 15, 2017, Plaintiff The Cincinnati Insurance Company  
("Cincinnati") filed an action styled, *Cincinnati Insurance Company v. National Union Fire  
Insurance Company of Pittsburgh, Pa.*, Hamilton County Court of Common Pleas, Case No.  
A1701483 ("state court action"). (See Request for Judicial Notice, Exhibits A – H.) All  
documents filed in the state court action are attached to the accompanying Request for Judicial  
Notice.

2. National Union was named as a defendant in the state court action Complaint and was served March 21, 2017. (*See* Request for Judicial Notice, Exhibit H.)

3. In the state court action, Cincinnati alleges that both Cincinnati and National Union are liable for a pro rata share of an amount paid in pre-suit settlement of an underlying claim (the “Gordon claim”). According to Cincinnati, it issued a Common Policy of insurance under no. CAP 512 15 44, effective from June 24, 2014, to June 24, 2015, to Wallick Properties Midwest, LLC (the “Cincinnati policy”). Cincinnati further alleges that National Union issued a Commercial Umbrella Liability Policy under no. BE 035384980, effective May 1, 2014, to May 1, 2015, to The Community Builders, Inc. (the “National Union policy”).

4. Cincinnati alleges that both the Cincinnati policy and National Union policy occupied the same level of excess coverage in relation to the Gordon claim, and after a primary layer of coverage provided by Liberty Mutual Insurance exhausted, both Cincinnati and National Union were obligated to contribute to the settlement pro rata in proportion to their respective policy limits.

5. Although Cincinnati did not specify the amount it paid in relation to the Gordon claim in its Complaint, Cincinnati in fact paid its \$1 million policy limit in settlement of the Gordon claim. (*See* Declaration of Patrick Fredette, ¶¶ 3-9.)

6. Based on the respective limits of the Cincinnati policy and the National Union policy, and Cincinnati’s contention that it is entitled to a pro rata contribution from National Union in proportion to the respective policy limits, Cincinnati seeks sums from National Union well in excess of \$75,000.

7. Cincinnati has alleged one combined cause of action for “Declaratory and Monetary Relief,” seeking a declaration that National Union is responsible for a pro rata share of the amount paid by Cincinnati, and seeking reimbursement from National Union for that amount.

## **II. REMOVAL JURISDICTION**

8. This action is being removed to the United States District Court, Southern District of Ohio, on the basis of diversity jurisdiction under the provision of 28 U.S.C. § 1332. The action is removable pursuant to 28 U.S.C. § 1441(b), as it is a civil action in which the matter in controversy exceeds the sum of Seventy-Five Thousand Dollars (\$75,000), exclusive of interest and costs, and is between citizens of different states.

## **III. CITIZENSHIP**

9. As alleged in the Complaint, Cincinnati is an Ohio corporation with its principal place of business in Ohio. (*See* Request for Judicial Notice, Exhibit I.)

10. As alleged in the Complaint, National Union is a Pennsylvania corporation with its principal place of business in New York. (*See* Request for Judicial Notice, Exhibit J.)

## **IV. AMOUNT IN CONTROVERSY**

11. This action is being removed to Federal Court on the basis that this is a civil action between citizens of different states and/or foreign nations and the matter in controversy exceeds the sum of \$75,000.

12. Although Cincinnati does not state the amount of its claim in its Complaint, Ohio law does not require specific statement of an amount in controversy in excess of \$25,000. *See, e.g., State ex rel. DeWine v. A & L Salvage*, 987 N.E.2d 307, 312 (2013).

13. “[F]or actions seeking a declaratory judgment, we measure the amount in controversy by the value of the object of the litigation.” *Northup Properties, Inc. v. Chesapeake*

*Appalachia, L.L.C.*, 567 F.3d 767, 770 (6th Cir. 2009). The object of the litigation is Cincinnati's contention that it is entitled to recover from National Union an amount that represents the pro rata allocation between the respective limits of the Cincinnati policy and the National Union policy.

14. Accordingly, the matter in controversy exceeds the sum of \$75,000 required for this Court to exercise original jurisdiction under 28 U.S.C. § 1332(a). *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014) ("a defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold").

**V. TIMELINESS OF REMOVAL PETITION**

15. The state court action Complaint was filed on or about March 15, 2017. National Union was served on March 21, 2017. Thirty days from service falls on Thursday, April 20, 2017. Therefore, this removal filed Tuesday, April 18, 2017, is timely.

**VII. NOTICE**

16. All parties will promptly receive written notice of the filing of this Notice of Removal, and a copy will be filed concurrently with the Clerk of the Court of Common Pleas of Ohio, County of Hamilton, pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, National Union prays that this action be removed to the United States District Court, Southern District of Ohio, from the Court of Common Pleas of the State of Ohio, County of Hamilton.

Dated: April 18, 2017

Respectfully submitted,

s/ Christopher Ryan

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Attorney for National Union Fire Insurance  
Company of Pittsburgh, Pa.

**CERTIFICATE OF SERVICE**

I hereby certify that on April 18, 2017, I served this document on the following via U.S. Mail and email.

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*Attorneys for Plaintiff*

s/ Christopher Ryan

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